



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0499; FRL- 9901-35-Region3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards and State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve two State Implementation Plan (SIP) revisions submitted by the District of Columbia (hereafter “the District”) pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the NAAQS. These elements are referred to as infrastructure requirements. The District made a submittal addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS and a separate submittal addressing requirements in relation to State Boards. EPA is approving portions of the infrastructure requirements for the 2008 lead NAAQS and the requirements addressing State Boards for the District in accordance with the requirements of the CAA.

DATES: This rule is effective on [insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a

timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2013-0499** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2013-0499, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2013-0499**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: On July 18, 2013, the District Department of the Environment (DDOE) submitted a revision to the District's SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 lead NAAQS (the infrastructure submittal). On this same date, DDOE submitted a revision to the District SIP addressing the State Board

requirements under sections 128 and 110(a)(2)(E)(ii) of the CAA.

I. Background

On October 15, 2008, EPA substantially strengthened the primary and secondary lead NAAQS, revising the level of the primary (health-based) standard from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $0.15 \mu\text{g}/\text{m}^3$, measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling 3-month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard, as well as the associated ambient air monitoring requirements. *See* 40 CFR 50.16.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS or within such shorter period as EPA may prescribe. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) provides the procedural and timing requirements for SIPs and section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal

authority that are designed to assure attainment and maintenance of the NAAQS. More specifically, section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS.

For the 2008 lead NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. Nevertheless, pursuant to section 110(a)(1), states have to review and revise, as appropriate, their existing SIPs to ensure that the SIPs are adequate to address the 2008 lead NAAQS. To assist states in meeting this statutory requirement, EPA issued a guidance on October 14, 2011, entitled, “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (hereafter the “2011 Lead Infrastructure Guidance”), which lists the basic elements that states should include in their SIPs for the 2008 lead NAAQS.

Section 110(a)(2)(E)(ii) requires the states to satisfy for each NAAQS the requirements of section 128 of the CAA in relation to State Boards. Section 128(a) requires SIPs to contain provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

II. Summary of SIP Revision

A. Infrastructure Requirements

On July 18, 2013, DDOE provided a submittal to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 lead NAAQS. This submittal addresses the following infrastructure elements, which EPA is proposing to approve: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. The infrastructure element (E)(ii) requirements, pertaining to State Boards, are satisfied by a separate submittal which was received by EPA on the same date and it is addressed in section II.B of this rulemaking action. The District did not submit element (I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process, if necessary.

While the District failed to submit a complete SIP addressing the portions of (C), (D)(i)(II), (D)(ii), and (J) relating to the part C, Title I of the CAA for the 2008 lead NAAQS, EPA recognizes that such requirements have already been addressed by a Federal Implementation Plan (FIP) that remains in place, containing the Prevention of Significant Deterioration (PSD) permit program. EPA concludes that such findings of incompleteness would not trigger any additional FIP obligation for the District with respect to these infrastructure requirements. Therefore, EPA is not taking any action for the 2008 lead NAAQS for elements (C), (D)(i)(II), (D)(ii), and (J), for the portions which relate to the PSD permit program required by part C, Title I of the CAA.

In accordance with the decision of the U.S. Court of Appeals for the D.C. Circuit, EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from the District as a required SIP submission. *See EME Homer City Generation, LP v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 2013 U.S. Lexis 4801 (2013). However, even if the submission is not considered to be “required,” EPA must act on the 110(a)(2)(D)(i)(I) SIP submission from the District because section 110(k)(2) of the CAA requires EPA to act on all SIP submissions. Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until EPA has quantified their obligations under that section. In this action, EPA is acting on the District’s 110(a)(2)(D)(i)(I) submission.

A detailed summary of EPA’s review and rationale for approving the District’s infrastructure submittal may be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at www.regulations.gov, Docket number **EPA-R03-OAR-2013-0499**.

B. State Board Requirements

On July 18, 2013, DDOE also submitted a separate SIP revision addressing the requirements of CAA section 128 in relation to the State Board requirements. This submission also satisfies the State Board requirements under 110(a)(2)(E)(ii) for the 2008 lead NAAQS. The SIP revision consists of updating the existing provisions in the District SIP which satisfy the obligations under sections 128 and 110(a)(2)(E)(ii). In this SIP revision, DDOE states that the relevant section 128 requirements are currently found in chapter 11A “Government Ethics and Accountability” of title I “Government Organization” of the District of Columbia Official Code (2012 Supp.), which the District through DDOE is requesting EPA to approve as part of the District’s SIP. The conduct

of the DDOE Director, and that of his employees, is currently subject to the requirements of title I, chapter 11A of the District of Columbia Official Code. All District employees are required to follow the laws in title I, chapter 11A of the District of Columbia Official Code regarding employee conduct.

Specifically, the SIP revision consists of incorporating into the SIP the following provisions of title I, chapter 11A of the District of Columbia Official Code, specifically section 1-1161.01 (“Definitions”); section 1-1162.23 (“Conflicts of Interest”); section 1-1162.24 (“Public Reporting”); and section 1-1162.25 (“Confidential Disclosure of Financial Interest”). These provisions supersede the section 128 provisions previously approved in the SIP, and DDOE requests as part of this SIP revision the removal of the prior provisions which addressed section 128 requirements from the District’s SIP. *See* (49 FR 22810, June 1, 1984), as codified in 40 CFR 50.470(e).

The requirements of section 128(a)(1) are not applicable to the District because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of section 128(a)(2), however, are applicable to the District because DDOE's Director (i.e., the head of an executive agency) has the similar powers discussed in section 128(a)(2). DDOE approves all CAA permits and enforcement orders in the District. DDOE is an executive agency that acts through its Director or a delegated state employee subordinate.

EPA finds that the measures in these provisions (sections 1-1161.01, 1-1162.23, 1-1162.24, and 1-1162.25 of the District of Columbia Official Code) are adequate to meet the District’s

obligations under section 128 as well as the infrastructure requirements of section 110(a)(2)(E)(ii). EPA also finds that the submittal specifically meets the infrastructure requirements of section 110(a)(2)(E)(ii) for the 2008 lead NAAQS.

III. Final Action

EPA is approving the District's two SIP revisions. EPA is approving the District's SIP revision addressing the following section 110(a)(2) elements for the 2008 lead NAAQS: (A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. This SIP revision provides the basic program elements specified in section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead NAAQS. This action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, title I of the CAA. EPA is also approving the District's SIP revision addressing the requirements of section 128. This SIP revision, which consists of incorporating the relevant provisions of title I, chapter 11A of the District of Columbia Official Code (2012 Supp.) in the District SIP and removing superseded provisions in the SIP under 40 CFR 50.470(e), meets the requirements of section 128. EPA is also approving this SIP revision as meeting the infrastructure requirements of section 110(a)(2)(E)(ii) for the 2008 lead NAAQS. The SIP revisions were formally and individually submitted on July 18, 2013. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment

by [insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking

action. This action, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 lead NAAQS and State Board requirements under section 128 of the CAA for the District, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: September 13, 2013.

W.C. Early,

Acting Regional Administrator,

Region III

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart J—District of Columbia

2. § 52.470 is amended by:

- a. Revising the table heading in paragraph (c) to read EPA-Approved Regulations and Statutes in the District of Columbia SIP.
- b. Adding at the end of the table in paragraph (c) headings for D.C. Official Code and Title I-Chapter 11A Government Ethics and Accountability, and entries for Sections 1-1161.01 and 1-1161.23 through 1-1161.25.
- c. In paragraph (e):
 - i. Removing from the table the entry “Revisions for conflict of interest procedures [CAA Section 128 SIP]”.
 - ii. Adding at the end of the table an entry “Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS”.
 - iii. Adding at the end of the table an entry “CAA section 128 requirements in relation to State Boards”.

The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *

(c)***

EPA-Approved Regulations and Statutes in the District of Columbia SIP.

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
D.C. Official Code				
Title I- Chapter 11A Government Ethics and Accountability				
Section 1-1161.01.	Definitions	4/27/12	[Insert Federal Register publication date] [Insert page number where the document begins]	
Section 1-1162.23	Conflicts of Interest	4/27/12	[Insert Federal Register publication date] [Insert page number where the document begins]	
Section 1-1162.24	Public Reporting	4/27/12	[Insert Federal Register publication date] [Insert page number where the document begins]	
Section 1-1162.25	Confidential Disclosure of Financial Interest	4/27/12	[Insert Federal	

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
			<u>Register publication date]</u> <u>[Insert page number where the document begins]</u>	

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(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* *			
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS	Statewide	7/18/13	[Insert Federal Register publication date] [Insert Federal Register page number where the document begins and date]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
CAA section 128 requirements in relation to State Boards	Statewide	7/18/13	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	

[FR Doc. 2013-24125 Filed 10/21/2013 at 8:45 am; Publication
Date: 10/22/2013]